

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated July 1, 2002 (Paper No. 10) and the Advisory Action dated December 26, 2002 (Paper No. 13). Upon entry of this Amendment, claims 1-18 will remain pending in this application. The amendment to claim 5 is editorial in nature and is fully supported by the specification and original claims. New claim 19 is also added and supported throughout the specification and original claims, for example, at pages 3 to 4. In addition, new claim 20 is also added and supported throughout the specification and original claims. No new matter is incorporated by this Amendment.

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Claims 5-18 are rejected under 35 U.S.C. 112, second paragraph, as purportedly indefinite.

The Office Action again asserts that the terms "skin structures", "micronutrients of the skin", and "sensorial agents" render claim 5 indefinite. In addition, the Office Action further asserts that the terminology "associated to" in claim 15 is indefinite.

Applicants again respectfully submit that those of ordinary skill in the art would readily appreciate what is intended by the terms questioned by the Office Action. Indeed, the Examiner appears to acknowledge that these agents are well known in the prior art. Applicants' kindly direct that Examiner's attention to page 2 of the Advisory Action dated December 26, 2002 which states, "It would have also be [sic] obvious to substitute known ingredients which are being used for their art recognized purpose such as, skin structures, micronutrients" Thus, the Examiner appears to agree that those of skill in the art would understand what is intended by the terms "skin structures" and "micronutrients." By way of clarification, Applicants again respectfully submit that skin structures are compounds capable of reestablishing the corneous extract cellular organization.

Micronutrients of the skin are compounds primarily comprising chemical elements such as Magnesium, Sodium, Potassium, Calcium, Selenium, Silicon and the like that act as enzymatic co-factors in cellular metabolism. Furthermore, sensorial agent are ingredients included in a cosmetic formulation in such a way that when the formulation is used by the end user it provides a pleasant sensation which can either be a visual, tactile or smelling sensation. As stated in previous Amendments, the specification contains examples of each.

Applicants again respectfully submit that the M.P.E.P. teaches that the test for indefiniteness is not whether more suitable language or modes of expression are available but whether the claim language sets forth the subject matter with a reasonable degree of clarity (emphasis added). See M.P.E.P. 2173.02. The M.P.E.P. further states, "Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire." See *id.* As explained above, those of ordinary skill in the art would readily understand what is intended by these terms. Moreover, defining each term in the claim is not a requirement of 35 U.S.C. 112, second paragraph. Applicants submit that since those of ordinary skill in the art would readily understand what is intended by these terms and examples of each are contained in the specification, the claims fully comply with 35 U.S.C. 112.

With respect to the term "associated to", Applicants have amended claim 15 to recite "associated with". Moreover, Applicants submit that the terminology "associated with" is not a relative term, such as "higher" or "bigger." The terminology "associated with" is used in the claim to mean a mixture where the specific emulsifiers cited in claim 5 are used together with one neutralizer compound selected from triethanolamin, soybean lectin and combinations thereof. The term "associated with" is adequately clear to those of ordinary skill in the art. Hence, claim 15 also fully complies with 35 U.S.C. 112.

The above Remarks overcome this rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 1-18 are rejected under 35 U.S.C. 103(a) as purportedly obvious based on Rinaldi et al. (U.S. Pat. No. 5,891,470) in view of Huc et al. (U.S. Pat. No. 5,395,620). Applicants respectfully traverse.

The present invention refers to a composition that associates stabilized Vitamin C with Vitamin A in microcapsules made of biologically active material. As stated in the last Amendment, Applicants have discovered a way to achieve a system which is capable of providing stability to the vitamin C in an aqueous medium through the addition of PVA, which polymer forms a network within the microcapsule thus avoiding the diffusion of vitamin A and vitamin C to the bulk formulation. Furthermore, in Applicants' invention, the Vitamins A and C are employed within specific mass/mass ratios, their individual concentrations being extremely low. The prior art of record neither teaches nor fairly suggests the specifically recited ratios of the recited claims.

no claims

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Rinaldi uses vitamin concentrations which are much higher than the present invention. The advantage provided by Applicant's invention with respect to using lower vitamin concentrations is explained by the releasing mechanism of the microcapsules claimed in that patent. According to the teachings of Rinaldi, the vitamins are released on the skin surface and should permeate the skin until reaching the target sites. Upon permeating the skin, the vitamins (which are natural antioxidants) may be inactivated. Therefore, the actual vitamin concentration acting on the target sites is much lower than the concentration initially present in the formulation. Thus, an initial higher concentration must be used in the product disclosed by Rinaldi.

In contrast, the present inventors developed a formulation where a particular vitamin association has the effect on the cellular activity as shown in the graphs included in the present application. As they are substances that may undergo the above mentioned degradation in cosmetic formulations, microcapsules are employed to protect the vitamins.

In addition, when retinol is present on the skin surface it may cause serious damage to the user if that skin portion is exposed to the sunlight. This is a further drawback of the Rinaldi composition. Moreover, this is also another distinguishing advantage of Applicants' composition. In the present invention, the microcapsules are used in order to ensure that the vitamins will permeate the skin and reach their target sites, wherein those microcapsules are broken through enzymatic reactions, thus releasing the vitamins directly in the skin inner part.

Those of ordinary skill in the art would not develop the present composition by simply combining the composition disclosed in Rinaldi with the microcapsules taught by Huc. If the teachings of these two documents were to be combined, the vitamins, and particularly Vitamin C (a hydrophilic compound), would not remain in the microcapsules unless an additional compound was employed that was able to retain the Vitamin C therein. In other words, the simple association (insertion) of Rinaldi's composition into Huc's capsules would not provide the same technical effect now obtained by present invention. Therefore, it is submitted that the present invention is neither taught nor rendered obvious by the combination of Rinaldi and Huc.

The combination of Rinaldi and Huc would not have rendered the claimed invention obvious to those of ordinary skill. A proper *prima facie* case of obviousness does not entail the mere citing of references in an effort to show that one or more claimed elements, when viewed in a vacuum, are known. Rather, to establish a *prima facie* case of obviousness the Examiner must show how one skilled in the art would have found it obvious to choose elements or concepts from the various references so as to arrive at the claimed invention without using Appellant's own disclosure and claims as a guide. Ex parte Clapp, 227 USPQ 972 (BPAI 1985).

In other words, to establish a *prima facie* case of obviousness, the Examiner must provide factual support from the cited patents for the proposed modification. This factual

support must be based on objective evidence of record and must establish that the cited patents themselves provide the requisite motivation, suggestion, or teaching regarding the desirability of making the specific combination made by the Appellant. The factual question of motivation is material to patentability, and can not be resolved on subjective belief and unknown authority. It is improper to determine whether a person of ordinary skill would have been led to this combination of references based upon hindsight. In re Sang Su Lee, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). Moreover, it is improper to combine the teachings of the prior art where the proposed modification would render the prior art version unsatisfactory for its intended purpose. *Ex parte Rosenfeld*, 130 USPQ 113 (POBA 1961) and *In re Gordon*, 733 F.2d 980, 902 (Fed. Cir. 1984).

Rinaldi and Huc actually teach away from the other. Rinaldi teaches that its soft gels are not compatible with water because the water will degrade the gelatin shell of the soft gel. See Column 1, Lines 40-45. This is why Rinaldi specifically uses non-biologically active microparticles. In contrast, Huc teaches using particles which are biocompatible because they are made of atecollogen (a derivative of collagen). See the Abstract. Applicants note that gelatin is also made of collagen. Thus, Rinaldi specifically teaches away from using collagen containing particles, as they would degrade. Hence, using Huc's collagen containing particles would actually ruin the composition of Rinaldi. Accordingly, not only does Rinaldi and Huc fail to provide the requisite motivation to those of ordinary skill in the art to modify the invention of Rinaldi with the teachings of Huc, there is also no reasonable expectation of success.

The above Remarks overcome the rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

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Applicants respectfully submit that this Amendment and the above remarks obviate all of the outstanding rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

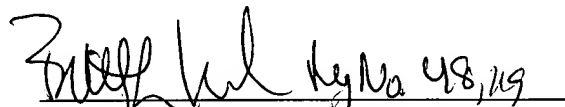
If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032286.006.

If an extension of time under 37 C.F.R. § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032286.006.

Respectfully submitted,
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67



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